

Remarks/Arguments

The present remark is in response to the Office Action mailed on October 20, 2005, in which Claim 1-20 were rejected. Applicant has thoroughly reviewed the outstanding Office Action including the Examiner's remarks and the reference cited therein. The following remarks are believed to be fully responsive to the Office Action and, when coupled with the amendments made herein, are believed to render all claims at issue patentably distinguishable over the cited references.

Claim 1, 3, 6-8 and 15-20 are amended. Claim 2 is cancelled. No Claims are added.

All the changes are made for clarification and are based on the application and drawings as originally filed. It's respectfully submitted that no new matter is added.

Applicant respectfully requests reconsideration in light of above amendments and the following remarks.

CLAIM Amendments – In General

The main substantive change to Claims 1 is added "communicating step", "outputting step" and "upgrading step". The main substantive change to Claims 8 and 15 is an added "upgrading step". The amendment is supported by the description of the original specification and pertinent drawings, and therefore does not add new matter.

CLAIM REJECTION – 35 U.S.C. SECTION 112

With respect to the Office Action mailed on October 20, 2005, the Examiner rejected

Claim 1-20 under 35 U.S.C. 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Examiner alleges that there is not antecedent basis for “said items” and “the selected items”. These claims are now amended by Applicant from “said items” to “said plurality of items”, and from “selected items” to “selected parts of said plurality”. The amendments are believed to be fully responsive to the Office Action.

CLAIM REJECTION – 35 U.S.C. SECTION 102

With respect to the Office Action mailed on October 20, 2005, the Examiner rejected Claim 1-20 under 35 U.S.C. 102 (e) as being anticipated by Downs et al (US Patent No. 6,226,618).

The Examiner is of the particular opinions that Downs shows, section IX, column 70-79, an electronic digital content store 103 (first device, proving merchandise) displays price and description of electronic content 113. The end-user device 109 (second device), column 79-89, is able to evaluate and select electronic content. The store and the end-user device can, upon request, download self-installing applications, mainly player application 195, which is designed for customization by being based on software object (column 86, line 26-27). Besides, Downs also has disclosed merchandise includes an expiration date (column 25, line 29), the product Ids (serial numbers) used to identify the particular electronic content selected, the authorizations (codes) and notifications of completions of activities (column 72, line 54-59).

Applicant respectfully traverses these rejections.

Firstly, Applicant has to state that, how to customize the software merchandise is particularly recited in the specification of present invention (referring to pages 6-8 and FIG. 2). Nevertheless, Downs does not particularly recite how to customize the Player Application 195. The procedures of customizing the Player Application 195 of Downs are merely recited from column 83, lines 39-44 and 58-65.

Secondly, the merchandise of present invention is “software merchandise”. The “software merchandise” of present invention is operational merchandise, and is able to provide specific functions. However, the merchandise of Downs is “context 113”, and the “context 113” is just the collection of data. Hence, the “context 113” does not provide specific functions like the “software merchandise” of present invention. As the statement discussed above, the nature of “context 113” of Downs differs greatly from that of “software merchandise” of present invention. Besides, Applicant has amended the claim 1 to emphasize that the merchandise of present invention is “software merchandise”.

Thirdly, the new merchandise of present invention is capable of being upgraded to prior version one in user’s electric device, if the prior version one has existed in user’s electric device. Applicant has also amended the Claims 1, 8, and 15 to emphasize this “upgrading” feature. However, this feature is not disclosed in Downs. The “context 113” is not able to be upgraded to prior version one in Downs.

For the reasons discussed above, Applicant respectfully submits that amended Claims 1, 8 and 15 are not anticipated by Downs. Other pertinent dependent claims which dependent directly or indirectly from Claim 1, 8, and 15 are also believed patentable over Downs.

Reconsideration and withdrawal of the rejections under 35 U.S.C. Section 102 is respectfully requested.

CONCLUSION

In the light of the above amendments and remarks, Applicant respectfully submits that pending Claims 1-20 as currently presented are in condition for allowance. Applicant has thoroughly reviewed that art cited but relied upon by the Examiner. Applicant has concluded that these references do not affect the patentability of these claims as currently presented. Accordingly, reconsideration is respectfully requested.

This Amendment was prepared by Applicant, and is being submitted without substantive change by the undersigned Attorney.

Respectfully submitted,
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Dated: 1/18/2006

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